

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

VICTOR S. MARTINI,

Plaintiff,

vs.

PRESQUE ISLE CAPITAL MANAGEMENT,
INC. and JAMES H. THOMAS,

Defendants.

No. 04-354E

Hon. Maurice B. Cohill, Jr.

Magistrate Judge Susan

Paradise Baxter

FILED

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CLERK
U.S. DISTRICT COURT

**DEFENDANTS' OBJECTIONS
TO PART OF MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION**

NOW COMES Defendants, through undersigned counsel, and pursuant to Local Rule 72.1.4 B, to object to part of Magistrate Judge Susan Paradise Baxter's Report and Recommendations dated February 6, 2006 [Document # 28] (the "Report").

1. Defendants object to the Report only insofar as it failed to address one argument in favor of dismissal, namely, Plaintiff's failure to plead the requisite elements of Count V. *See* Document # 25, at p. 4. Given that Plaintiff has failed to plead the elements, for the reasons set forth in Document # 25, Count V should be dismissed without prejudice.

Dated: February 9, 2006

Respectfully submitted,

**Presque Isle Capital Management, Inc.
and James H. Thomas**

By:


Robert L. Herskovits

Robert L. Herskovits, Esq.
BACHNER & HERSKOVITS, P.C.
Attorney for Defendants*
26 Broadway, Suite 2310
New York, NY 10004
(212) 344-7778
(212) 344-7774 – fax
rh@bhlawfirm.com – email


*Subject to *pro hac vice*
admission

CERTIFICATE OF SERVICE

The undersigned, an attorney, certifies that he caused to be served on February 9, 2006, by facsimile, a copy of the DEFENDANTS' TO PART OF MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION, to Plaintiff's counsel:

Arnold Y. Steinberg, Esq.
Arnold Y. Steinberg, P.C.
1420 Center Avenue
Suite 1504
Pittsburgh, PA 15219

By: _____


Robert L. Herskovits

Robert L. Herskovits, Esq.
BACHNER & HERSKOVITS, P.C.
26 Broadway, Suite 2310
New York, NY 10004
(212) 344-7778
(212) 344-7774 – fax

BACHNER & HERSKOVITS, P.C.

ATTORNEYS AT LAW
26 BROADWAY
SUITE 2310
NEW YORK, NEW YORK 10004

TELEPHONE: (212) 344-7778
FACSIMILE: (212) 344-7774

www.bhlawfirm.com

MICHAEL F. BACHNER*
ROBERT L. HERSKOVITS

DANIELLE L. ATTIAS

*ALSO ADMITTED IN NJ

NEW JERSEY OFFICE
175 FAIRFIELD AVENUE
SUITE 3D
WEST CALDWELL, N.J. 07006
TEL: (973) 403-9550

February 9, 2006

BY FEDERAL EXPRESS

United States District Courthouse
Western District of Pennsylvania
17 South Park Row
Erie, PA 16501

Attn: Clerk's Office

Re: Victor S. Martini v. Presque Isle Capital, et al.
04-354E

Dear Sir or Madam:

I represent defendants Presque Isle Capital Management, Inc. and James H. Thomas subject to *pro hac vice* admission.

Enclosed for filing are the original and one copy of:

- Defendants' Objections to Part of Magistrate Judge's Report and Recommendations.

Defendants' counsel has submitted an ECF Registration Form. Since that application remains pending, we respectfully request that the Clerk's Office accept this hard copy filing.

Yours truly,



Robert L. Herskovits

Cc: Arnold Y. Steinberg, Esq. (By fax w/enc.)

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